IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

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No. 74-233

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THE DEPARTMENT OF TRANSPORTATION OF THE STATE OF MARYLAND, *Petitioner,*

v.

CIVIL AERONAUTICS BOARD, *Respondent*

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## REPLY MEMORANDUM ON BEHALF OF PETITIONER

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A short but emphatic reply to the Government's brief in opposition becomes necessary by reason of a direct misstatement by the Government on what is, analytically, the crucial point in this case insofar as the Court is concerned with the merits of the decision below.

The Brief for the Civil Aeronautics Board in Opposition states, with respect to the Initial Decision of Administrative Law Judge Cusick, that:

> "The Judge deemed a mileage-based rate structure to all points to have 'merit' *and to be a lawful*

> *remedy* under Section 1002(f) (Pet. App. 67a); however, he concluded that common rating the five east coast cities would better encourage decentralization of the North Atlantic cargo flow." (p. 3) (Emphasis supplied).

Judge Cusick's statement referred to was actually as follows:

> "As noted earlier, New York generally prefers that air cargo rates for the North Atlantic be based on the shortest operated mileage in the markets at issue. While this solution has some merit, *it would not provide a complete remedy* for the problem." (J.A. 67a-68a) (Emphasis supplied).

The statutory provision referred to (Federal Aviation Act, section 1002(f)) provides that when the Board finds that an international rate is unjustly discriminatory

> "the Board may alter same *to the extent necessary to correct* such discrimination * * *." (Emphasis supplied).

Thus, Judge Cusick did *not* hold that the Board's novel mileage basis would be a "lawful remedy under Section 1002(f)"; rather he held exactly the contrary, i.e., he recognized that

> "it would not provide a complete remedy for the problem",

which the Board was required by the statute to do.

The reasons why the Administrative Law Judge was clearly right in this conclusion have been summarized in our petition and will not be repeated here.

Respectfully submitted,

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